

STATE OF MICHIGAN
COURT OF APPEALS

HIGHTOWER & HIGHTOWER, INC., SYLVIA
HIGHTOWER, and JAMES HIGHTOWER,

UNPUBLISHED
November 2, 2004

Plaintiffs-Appellants,

v

No. 248882
Wayne Circuit Court
LC No. 02-202443-CZ

COMMUNITY LIVING SERVICES, a/k/a
WAYNE COUNTY LIVING SERVICE, JAMES
DEHEM, TRACEY FALLETICH, RANDY
WILSON, JON TODD, JANET SINCLAIR, and
ROBERT SIMS,

Defendants-Appellees.

Before: Griffin, P.J., and Saad and O’Connell, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court’s order granting defendants summary disposition. Plaintiffs’ claims were based on theories of contract, defamation, and injurious falsehood. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

The corporate defendant is in the business of placing residents into group homes for developmentally disabled persons. For over twenty years, defendant contracted with the corporate plaintiff to provide services for defendant’s group-home residents.¹

In January 2002, defendants sent a letter to plaintiffs recounting that as of August the previous year, plaintiffs “were notified that [defendants] intended to exercise a thirty-day termination of your contract effective October 01, 2001, unless an acceptable Plan of Correction was received” in connection with a new dispute. The letter accuses plaintiffs of having “failed to follow policies with regard to properly accounting for expenditures,” and announces that the contract is terminated, “with or without cause,” as of January 23, 2002.

¹ For convenience, in this opinion the use of the singular “plaintiff” or “defendant” will refer to the respective corporate entities.

Plaintiffs brought this action, and defendants moved for summary disposition. After hearing oral arguments, the trial court held that defendants properly terminated the contract under its at-will provision, and dismissed the contract claim. The court additionally held that plaintiffs had offered insufficient evidence of falsehood and malice in connection with any statements about which plaintiffs complained, so it dismissed the claims of defamation and injurious falsehood. On appeal, plaintiffs challenge the dismissal of each claim. We review de novo a trial court's decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

The court's role in a contract action is to review the entire contract and enforce the parties' expressed intent. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). Absent an ambiguity in the language, the court may decide and effectuate the contract's meaning as a matter of law. *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998).

Section VIII of the contract in question covers termination. It reads, in pertinent part, as follows:

- A. This contract may be terminated by either party *with or* without cause thirty (30) days after written notification.

* * *

- B. The CONTRACTOR agrees and acknowledges that [defendant] has the sole right to determine that contractual noncompliance gives rise to an imminent risk of serious harm or danger to the consumers supported by this contract. The CONTRACTOR agrees and acknowledges that [defendant] may, in its sole discretion, immediately cancel this contract, if [defendant] determines that contractual noncompliance constitutes an imminent risk of serious harm or danger to the consumers

Plaintiffs argue that subsection A's provision for at-will termination and subsection B's provision regarding termination for cause create an ambiguity, and that this ambiguity should be resolved in plaintiffs' favor. We disagree.

Subsection A sets forth a thirty-day notice requirement should either party choose to terminate without cause. Subsection B envisions immediate termination for cause, at defendant's sole discretion. The two provisions obviously operate in complementary fashion, setting forth the actions that justify immediate termination while requiring thirty days' notice for termination regardless of cause. There is no dispute that defendant terminated the contract after giving plaintiff thirty days' notice.² Under the plain meaning of the contract, defendant was entitled to

² The letter is dated January 11, 2002, and announces termination as of January 23, 2002. It also refers to thirty-days' notice conditionally given on August 30, 2001.

terminate with or without cause after giving the proper notice, so the trial court correctly dismissed the contract claim.

Regarding plaintiffs' tort claims, defamation and injurious falsehood each require a plaintiff to demonstrate that the defendant published a false and injurious statement. *Mino v Clio School District*, 255 Mich App 60, 72; 661 NW2d 586 (2003); *Kollenberg v Ramirez*, 127 Mich App 345, 352; 339 NW2d 176 (1983). The elements of defamation must be pleaded with particularity, including those elements regarding "the defamatory words, the connection between the plaintiff and the defamatory words, and the publication of the alleged defamatory words." *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 77; 480 NW2d 297 (1991). Allegations must include the substance of the defamatory statements and to whom publication was made. *Id.* at 78.

Plaintiffs' complaint asserts that defendants made false statements about plaintiffs' "dilatory procedures in paying their employees," "misappropriation of wards' funds," and "neglect and ineptitude relative to their residents' care and treatment," that they did so to "third parties, including . . . the guardians of Plaintiffs' residents and several other adult home care providers," and that they did so by "sending letters to the third parties individuals, via media coverage (i.e., television and newspaper), and by making verbal statements." These allegations do not indicate precisely what was said, or precisely to whom they were said but for the general mention of their residents' guardians.

At the motion hearing, plaintiffs' attorney relied on a November 14, 2001, letter that defendants sent to the guardians of plaintiffs' clients. The letter indicates that defendants had opened an investigation in response to audit findings that "approximately \$12,000.00 of expenditures pertaining to the individuals receiving supports from [plaintiff], could not be supported or verified with receipts." The letter continues that defendants had concluded that plaintiffs "failed to follow policies with regard to properly accounting for expenditures," was "unable to properly account for residents' funds," and that plaintiffs were cited "for failing to safeguard the recipients' funds." The letter further described remedial action in which plaintiffs participated, with no indication that the relationship with plaintiffs would be discontinued.

This letter expresses concerns that put plaintiffs in a questionable light, but stops far short of accusing plaintiffs of stealing the residents' funds. Moreover, the letter fails to support any of the allegations in plaintiffs' complaint. The letter avoided any truly insidious implications against plaintiffs by evidencing the intention to continue the relationship with plaintiffs. Plaintiffs failed to show that the allegations relating to false and injurious statements were pleaded with sufficient specificity or supported by sufficient evidence, so the trial court correctly granted defendants summary disposition on plaintiffs' claims of defamation and injurious falsehood.

Affirmed.

/s/ Richard Allen Griffin
/s/ Henry William Saad
/s/ Peter D. O'Connell